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# ***SEX OFFENDER SUPERVISION AND TREATMENT:***

**1720**

## **POLYGRAPH**

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***POLYGRAPH EXAMINATION*****Introduction**

The use of polygraph examinations is an established and accepted practice in developing a community safety plan for the treatment and supervision of sex offenders in the community. Polygraphy can be used to increase a patient's accountability, to enhance supervision, to assist in ensuring public safety, and to monitor a patient's progress in treatment. Use of the polygraph in CONREP is intended as one treatment and supervision component, and is not to be used apart from the role of patient treatment specified within a cognitive-behavioral, relapse prevention, sex offender treatment program. Polygraph examinations will not be used for the determination of guilt or innocence related to any specific crime. Polygraph examinations will also not be used as the sole criterion for release or revocation in CONREP.

When a polygraph examination reveals deception or when the results are inconclusive, the information should be used to develop an increased supervision plan for the patient while CONREP staff explores the possible causes of deception. The resulting clinical information should be incorporated into the patient's treatment plan. When a polygraph reveals no deception, the program and the patient can assume that the patient is participating in treatment as specified in his/her treatment plan.

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### ***DEFINITIONS***

**“Polygraph”**

A clinical polygraph examination is the employment of any instrumentation used for the purpose of detecting deception or verifying the truth of statements of any person under supervision and treatment for the commission of a sex offense.

**“Child Abuse”**

Child Abuse refers to sexual abuse, exploitation, or physical injury which is inflicted by other than accidental means, and a variety of other forms of abuse which are or were committed against a person prior to that person’s 18<sup>th</sup> birthday. Specific definitions of Child Abuse may be found in Penal Code section 11165.

**“Sex Offender”**

For the purpose of this section of the CONREP Policy and Procedure Manual, a sex offender is any patient who has a diagnosis of Paraphilia, or who is a required PC 290 registrant. Further, for the purpose of defining frequency of authorized use of the polygraph, sex offenders will be categorized into Low, Medium and High-Risk categories (defined below). Assignment into these categories will be the clinical decision of the CONREP Community Program Director and based upon clinical evaluation of each particular case.

**“Low Risk Sex Offenders”**

These patients have few sexually inappropriate behaviors, which have occurred predominantly during psychotic episodes. Their legal status is NGI, or MDO.

**“Medium Risk Sex Offenders”**

These patients have sex offense histories that occurred independent of acute psychotic states. Their legal status is NGI, MDO, and MDSO.

**“High Risk Sex Offenders”**

These patients have sex offenses as the predominant focus of treatment and/or have a primary diagnosis of Paraphilia. Their legal status is SVP, MDO, and MDSO.

***AUTHORIZATION FOR POLYGRAPH*****Polygraph Referral Committee**

All requests for polygraph authorization will be submitted to the Polygraph Referral Committee (PRC). The PRC is comprised of three Community Program Directors (or designees) and a CONREP Operations Liaison. The Community Program Directors will have knowledge and/or experience as demonstrated by training in the area of Sex Offender Treatment. Committee members will be designated and approved by the CONREP Operations Manager. The purpose of this committee is to review the referral within 30 calendar days of receipt to ensure that the provider is properly applying the polygraph as a treatment and supervision tool.

**Polygraph Referral Process**

A referral for polygraph examination must be forwarded to the Polygraph Referral Committee which will review the request documented on form MH 5781, and make a recommendation to the Community Program Director, who has the final decision. The CONREP program should forward four copies of form MH 5781, along with requested documentation to the Polygraph Referral Committee, who in turn will notify the program in writing of their recommendation within the 30-day period. In instances where a deceptive or inconclusive result has been obtained from a polygraph, and after working with the patient about possible causes of such results, a re-test polygraph test may be taken without the program having to re-apply to the Polygraph Referral Committee for approval.

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#### ***PREREQUISITES FOR POLYGRAPH USE***

##### **Polygraph Referral Requirements**

The following requirements must be fulfilled prior to submitting a polygraph referral:

- \* Signed Terms and Conditions outlining participation in polygraph examination as a requirement of outpatient treatment
- \* Signed Advisement and Consent to participate in a Polygraph Examination. This can be accomplished by having the patient sign the Consent and Release of Information Form MH 5782. Additionally the program staff should discuss and document discussion with the patient the purpose of the examination, the limitations of confidentiality, possible issues of self-incrimination, and California abuse reporting laws.
- \* Signed Consent and Release of Information Form MH 5782 for Polygrapher. The patient must also sign a release, which authorizes the program to release for review by the polygrapher, all relevant records and reports (Police and Arrest Reports, CONREP Reports, Sexual Histories, fantasy logs, anger logs, etc.) in order for the polygrapher to assist the program in developing appropriate polygraph questions. As new polygraphers are used, new consent forms must be signed prior to release of records for review.
- \* The Community Program Director attests that he/she has discussed the proposed polygraph examination with a medical doctor and there are no known physical, psychiatric, or medication related issues that may compromise the accuracy of the examination.

***PREREQUISITES FOR POLYGRAPH USE*****Polygraph Referral  
Requirements (cont.)**

- \* Adequate clinical preparation of the patient regarding disclosure of his/her sexual history. This clinical preparation should include development of a therapeutic alliance, development of tools to cope with anxiety, an increased ability to examine what the impact of disclosure has on the patient, and completion of a Sexual History Questionnaire.

**Polygrapher Qualifications**

Currently, CONREP programs are responsible for locating and subcontracting with a polygrapher trained to perform the polygraph examination. Programs are encouraged to contact CONREP Operations for assistance if needed. The following guidelines, recommended by the American Polygraph Association, shall be used for selection criteria when engaging a polygrapher:

- \* Graduate of an accredited polygraph school with internship.
- \* Diploma from the American Polygraph Association documenting that the examiner “has successfully completed the training requirements (for Sex Offender Treatment and Monitoring Programs) set forth in the Standards of Practice, approved by the American Polygraph Association.”
- \* Completion of 40 hours of continuing education every 3 years. Ten hours may be indirectly related to Sex Offender Assessment/History Management. The remaining 30 hours must be directly related to Sex Offender Assessment/History Management.
- \* Adherence to the code of ethics and by-laws of the American Polygraph Association, and shall conduct all examinations consistent with the ethics and by-laws.

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#### ***PREREQUISITES FOR POLYGRAPH USE***

##### **Polygrapher Qualifications (cont.)**

- \* All polygraphers will sign a document attesting that they will comply with the above requirements prior to conducting a polygraph examination upon a CONREP patient.
- \* It is recommended that the same polygrapher not examine patients more than 3 times sequentially, as habituation due to testing frequency may alter the results of the examination. A re-examination conducted to resolve a previously deceptive examination, or where no clear opinion as to the subject's truthfulness resulted, would not be considered a separate examination.



***POLYGRAPH EXAMINATION TYPES*****Polygraph Types**

There are three types of polygraph examinations used for the treatment of sex offenders: Sexual History Polygraph, Monitoring/Maintenance Polygraph, and Specific Issue Polygraph.

**Sexual History Polygraph**

This type of polygraph may be used with Low, Medium or High-risk sex offender patients who do not have prior Sexual History Polygraphs, in which the Sex History Questionnaire from the Wisconsin Department of Corrections for outpatient supervision was used. Patients who have undergone sex offender treatment at NSH, PSH, or ASH may have had Sexual History Polygraphs conducted early in their sex offender treatment, but not necessarily the Sexual History Questionnaire from the Wisconsin Department of Corrections.

Sexual History questionnaires vary, with some questionnaires emphasizing treatment, and others emphasizing both treatment and supervision. It is important for CONREP programs to have information about sex offender patients in both areas.

CONREP Operations has chosen the Sexual History Questionnaire adapted from the Wisconsin Department of Corrections as the authorized Sexual History Questionnaire to be used for all patients undergoing this type of polygraph as it provides information useful for treatment and supervision purposes. Patients already in CONREP who might have received a polygraph using a different questionnaire should be scheduled for a polygraph examination using the Sexual History Questionnaire from the Wisconsin Department of Corrections within the first six months after beginning outpatient sex offender treatment. Those patients who received a polygraph using this questionnaire do not need to repeat this type of polygraph before beginning outpatient sex offender treatment.

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#### ***POLYGRAPH EXAMINATION TYPES***

##### **Sexual History Polygraph (cont.)**

For patients who have not participated in sex offender treatment, a Sexual History Polygraph should be scheduled following several months of treatment, and only after they have been prepared for it by reviewing the detailed Sexual History Questionnaire in their treatment group.

Because of the specific nature of this type of Sexual History Questionnaire, and the potential risk of self-incrimination when disclosing possible undisclosed crimes, caution is warranted. Currently there is no blanket immunity provided to patients who reveal new, or previously uninvestigated sex crimes. Child and Dependant Adult abuse reporting laws also apply. Therefore, all protections should be implemented so that self-incriminating information is not revealed when using the questionnaire.

There may be some variation in the stringency of local policies regarding prosecution of sex crimes revealed while the patient is in sex offender treatment. It is recommended that programs have discussions with patients, as well as with the District Attorney's office in the county of commitment before a Sexual History Polygraph is performed, so that the patient is advised of the policy in that county. CONREP programs are advised to help patients fully discuss their sexual histories for treatment and supervision purposes before a polygraph examination.

***POLYGRAPH EXAMINATION TYPES*****Sexual History Polygraph (cont.)**

At the same time, CONREP staff must advise patients of the types of information that, if disclosed, would necessitate an abuse report. Information to avoid mentioning in a Sexual History Questionnaire would be the name of the victim, month and day of occurrence, city/county of occurrence, or any other data by which the victim could be easily identified. The patient should be advised that, if this kind of detailed information is provided regarding a previously undisclosed incident of child or dependent adult abuse, the program is mandated to report such disclosed information to the appropriate authorities for investigation.

If a new, non-reportable incident is disclosed (such as a rape of a non-dependant adult, burglary, etc.), the program should explore the details surrounding the incident, and evaluate whether the information and behavior warrants follow-up or hospitalization. Such reports by the patient can be included in the treatment record (in the context of clinical assessment and analysis) and in quarterly or annual court reports.

In this instance, patient confidentiality would preclude a direct report to the police. A telephone report of the incident should be made to CONREP Operations immediately, followed by a SIR within the customary time frame.

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#### ***POLYGRAPH EXAMINATION TYPES***

##### **Mandated Reporting of Child and Dependant Adult Abuse**

When specific, detailed information is disclosed regarding previously undisclosed crimes of sex abuse of children or dependant adults within the parameters noted above, the mandated reporting statute most likely requires reporting immediately to the appropriate social services agency or sheriff's department in the area where the alleged crime occurred (see DMH Special Order 702.01). This report must be followed by a written report within 36 hours using form SS#8572, which is supplied by the Department of Justice and available through local sheriff's departments and welfare agencies. In addition, a telephone report of the incident should be made to a CONREP liaison immediately, followed by a written SIR within 72 hours.

There is no statute of limitations on the requirement to report, and crimes allegedly occurring outside of the state of California are not excluded. If it is unclear whether a report is required under the mandated reporting statutes, DMH (and/or the Program Director) can be consulted for assistance. However, it should be remembered that, under the mandated reporting statutes, the individual clinician is made responsible for deciding when such a report should be made.

If reporting is indicated, the date, time, agency's contact name and telephone number should be documented in the patient's chart, along with documentation that a SS#8572 report was appropriately submitted (including date and time). A copy of the report should be filed in the chart, and an entry should be made stating that the CONREP Operations liaison was notified by telephone.

***POLYGRAPH EXAMINATION TYPES*****Mandated Reporting of Child  
and Dependant Adult Abuse (cont.)**

While mandated reporting is most likely to occur when instituting the Sexual History Polygraph, Monitoring/Maintenance Polygraph, and Specific Issues Polygraph may also reveal incidents that require the clinician to report them to authorities, and patients should be advised of this in advance.

**Monitoring/Maintenance Polygraph**

The purpose of a Monitoring/Maintenance Polygraph is to identify problem behavior and the extent of that behavior. The exam may also verify that the patient is not re-offending. It can also be useful as a deterrent to reduce recidivism. Inquiry may be made about new sex crimes, contact with minors, drug/alcohol use, theft, and any violations of the law, use of pornography, frequency of masturbation, etc. The polygrapher and the CONREP staff will develop specific questions. Deception on Monitoring/Maintenance Polygraphs cannot be used as the sole basis for revocation, but shall be used as a rationale for increased supervision and surveillance while the program explores lapse/relapse issues.

Monitoring/Maintenance Polygraph shall be performed:

- \* One time per year for Low and Medium risk Sex Offenders
- \* Quarterly for High-risk offenders while they are in the Intensive level of treatment
- \* Twice per year for High Risk offenders while they are in the Supportive, Intermediate, and Transitional levels of treatment

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### ***POLYGRAPH EXAMINATION TYPES***

#### **Monitoring/Maintenance Polygraph (cont.)**

Patients being considered for a recommendation for Community Aftercare Level of Care should receive a Monitoring/ Maintenance Polygraph examination to help assure that the patient is not re-offending and is in compliance with treatment parameters.

When planning to change a patient's care level from Intensive to Intermediate to Supportive to Transitional, a Monitoring / Maintenance Polygraph examination should be coordinated at the time a patient's performance and risk assessment is being assessed.

#### **Specific Issue Polygraph**

A Specific Issue Polygraph may be instituted for High, Medium and Low risk sex offenders at any point in treatment when clinically indicated. This kind of polygraph is used when the clinician has reason to address a specific question or obtain information about a specific topic. For example, a Specific Issue Polygraph may be used to assist in clarifying issues that previously resulted in deception on a Monitoring/Maintenance Polygraph.

***POLYGRAPH EXAMINATION PROCEDURES*****Pre-Testing**

Prior to testing, the polygraph examiner will review reports and clinical notes about the patient from CONREP, courts, and police reports, and will interview the CONREP representative to determine the nature of the referral questions. At the time of examination, the examiner will verify the identity of the patient and obtain information from the patient about existing medical and physical conditions in order to assess fitness for testing.

A pre-exam interview is held with the patient to establish trust. The polygrapher will develop a question set based on the program's request, and the pre-exam interview. CONREP will review the question set prior to administration to ensure no specific self-incriminating identifying details are revealed. No more than 5 relevant questions will be asked during any given exam. The polygrapher will explain the polygraph process to the patient, and will review all questions that will be asked during the examination.

**Data Collection**

The polygraph examiner will complete 3-5 charts for each examination. Questions will be simple and precise and posed in a yes/no format.

**Post-Test Data Analysis**

The polygraph examiner will conduct a post-exam interview during which the patient will be asked about those areas to which he/she responded. Polygraphers may retain a second polygraph examiner to review charts for quality control purposes.

Written reports with results are provided in terms of truthfulness, deceptiveness, or inconclusive to the relevant question. Reports should be provided to the program within two weeks of completion of the examination.

All examinations should either be audio taped or videotaped. These results are the property of the polygrapher, but are usually available for viewing by the treatment provider upon request.

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### ***GUIDELINES FOR PATIENTS WHO CANNOT BE EXAMINED***

#### **Exclusionary Criteria**

Not every sex offender in a Sex Offender Treatment program is an appropriate candidate for polygraph examination. Some common reasons for exclusion of the use of this examination are listed below and include:

- \* Patients released to CONREP without a polygraph as part of their Terms and Conditions, and/or refuse to sign consent and release forms, will not be tested until a requirement for polygraph is added to their Terms and Conditions, and they have agreed to sign all appropriate consent and release forms.
- \* Extremely overweight patients (polygraph attachments will not operate properly).
- \* Sleep Deprivation. (Patients need to sleep the night prior to the examination. If the patient works the “graveyard shift”, the exam should be re-scheduled for later in the afternoon, provided the patient gets at least 6 hours of sleep by that time).
- \* Hangover. A patient whose recent abuse of alcohol is sufficient to result in hangover symptoms is not an appropriate candidate for a polygraph examination.
- \* Low IQ. Patients with an IQ below 80 may not be suitable for certain kinds of testing, but simple focus issues can possibly be done.
- \* Heavily Medicated Patients. All patients should continue to take all prescribed medications. (Except Beta Blockers, which would alter the test results. In these instances, the patient should not be tested until a physician authorizes the discontinuation of the medication.).



***GUIDELINES FOR PATIENTS WHO CANNOT BE EXAMINED*****Exclusionary Criteria (cont.)**

- \* Most medications will not affect the test. However, if the patient is taking medications for a serious neurological disorder (such as Tardive Dyskinesia, or Cerebral Palsy), no testing can be done.
- \* Patients who have sought to alter their responsiveness by using various techniques, medications, etc.
- \* Patients who are actively psychotic.
- \* Other physician-defined exclusion criteria.

CONREP programs should discuss case-specific questions with the polygrapher regarding appropriate referral for polygraph.